



University of Kentucky
UKnowledge

1970-1979

Briefs

3-19-1976

Jesse Vincent Paschal v. International Harvester Company, Inc.

Appellant's Brief 1976-SC-0170

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Follow this and additional works at: https://uknowledge.uky.edu/ky_appeals_briefs70s

 Part of the [Courts Commons](#)

Repository Citation

1976-SC-0170, Appellant's Brief, "Jesse Vincent Paschal v. International Harvester Company, Inc." (1976). 1970-1979. 610.
https://uknowledge.uky.edu/ky_appeals_briefs70s/610

This Brief is brought to you for free and open access by the Briefs at UKnowledge. It has been accepted for inclusion in 1970-1979 by an authorized administrator of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.



KYSC1976-SC-0170-01

{93F1A5D5-9688-4A94-86A7-15EA488CC664}
{135147}{54-130809:111929}{031976}

APPELLANT'S BRIEF

SUPREME COURT OF KENTUCKY

File No. 76-170

JESSE VINCENT PASCHAL Appellant

versus

INTERNATIONAL HARVESTER COMPANY,
INC. Appellee

APPEAL FROM JEFFERSON CIRCUIT COURT
COMMON PLEAS BRANCH, SEVENTH DIVISION
HON. THOMAS A. BALLANTINE, JR.

BRIEF FOR APPELLANT

FILED

MAR 19 1976

MARTHA LAYNE COLLINS
CLERK

SUPREME COURT

ROBERT G. LOHMAN, JR.
RICHARD A. DOLIN

200 South Seventh Street
Louisville, Kentucky 40202

Attorneys for Appellant

This is to certify that copies of this Brief have been served on the adverse parties by mailing copies to William D. Grubbs and the Hon. Thomas A. Ballantine, Jr., the Trial Judge, pursuant to RCA 1.250.


Attorney for Appellant

TABLE OF CONTENTS AND AUTHORITIES

	PAGE
Statement of the Questions Presented.....	ii
Statement of the Case.....	1-2
Argument: A. Did the Trial Court Err in Granting a Summary Judgment for Appellee?.....	2-6
<i>Houchin v. Willow Avenue Realty Company, Ky.,</i> 453 S. W. 2d 560 (1970).....	2, 3, 4-5
<i>Stewart v. Lawson, Ky.,</i> 437 S. W. 2d 733 (1969) ..	5
<i>Downing v. Drybrough, Ky.,</i> 249 S. W. 2d 711 (1952)	5
<i>Creech v. Heaven Hill Distilleries, Inc., Ky.,</i> 497 S. W. 2d 934 (1973).....	5-6
Conclusion	6

STATEMENT OF THE QUESTIONS PRESENTED

- A. Did the Trial Court err in granting a Summary Judgment for Appellee?

SUPREME COURT OF KENTUCKY

File No. 76-170

JESSE VINCENT PASCHAL - - - *Appellant*

v.

INTERNATIONAL HARVESTER COMPANY,
INC. - - - - - *Appellee*

APPEAL FROM JEFFERSON CIRCUIT COURT
COMMON PLEAS BRANCH, SEVENTH DIVISION
HON. THOMAS A. BALLANTINE, JR.

BRIEF FOR APPELLANT

May it please the Court:

STATEMENT OF THE CASE

A. Statement of Nature of the Proceeding.

This appeal is taken from a Summary Judgment in favor of the Defendant-Appellee, International Harvester Company, Inc.

In August, 1974, the Plaintiff-Appellant, Jesse Vincent Paschal (hereinafter Paschal), was working as a driver for Commercial Motor Freight (Depo., Paschal, pp. 4, 6). At approximately 9:30 or 10:00 at night on August 30, 1974, Paschal took a tractor

trailer to the plant of Defendant-Appellee, International Harvester Company, Inc. (hereinafter Harvester) (Depo., Paschal, pp. 7, 9). Upon arriving at the Harvester's plant he was admitted by a guard who told him to drop the trailer on the back of the lot. The lot was full of trailers and junk making it difficult to find a place for the trailer (Depo., Paschal, p. 12). After he found a place for the trailer, Paschal backed the trailer in and climbed down to go back and roll the dollies down (Depo., Paschal, p. 13). The area was dark and unlit, but Paschal had noticed some junk by the light from the trailer lights in the *back* of the trailer as he was backing into the spot (Depo., Paschal, pp. 13, 16). After getting down he unhooked the wires and cable from the trailer, turning off the rear trailer lights. Then as Paschal walked back along the side of the trailer he caught his foot on a piece of steel sticking down low and fell (Depo., Paschal, pp. 17, 18). There was no testimony as to whether or not the rear trailer lights, after the trailer was parked, allowed Paschal to see anything along the side of the trailer.

ARGUMENT

A. Did the Trial Court Err in Granting a Summary Judgment for Appellee?

The Appellee-Defendant, International Harvester Company, Inc., in its motion for a Summary Judgment relies on *Houchin v. Willow Avenue Realty Company, Ky.*, 453 S. W. 2d 560 (1970) as controlling on the case at bar on the issue of the Appellant's contribu-

tory negligence as a matter of law (Memorandum, pp. 9, 10, Official Record). The facts in the case at bar can readily be distinguished.

In *Houchin, supra*, the Plaintiff fell at the bottom of dimly lighted basement stairs while descending the stairs in order to wash curtains. But, the Plaintiff in *Houchin, supra*, was aware of the dangerous conditions. Two weeks before the accident, she had reported to the landlord that the light at the bottom of the stairs was out. She'd even been to the basement several times during the two-week period, and had noticed the light had not been replaced. Also, the purpose of the trip was to wash some curtains, and was not of necessity or urgency. The Court held that the conduct of the Plaintiff was unreasonable and the elements of urgency and substantial necessity were absent.

The Appellee-Defendant, International Harvester Company, Inc., has not argued that Mr. Paschal knew of the condition of the lot, but that only he could have alleviated the problem by leaving the trailer lights on. The Defendant relies on testimony taken from Defendant's deposition at pages 17 and 18 which states:

99. But that turned all the lights on the trailer off?

A. Yes, sir.

100. So you couldn't see anything?

A. Right.

101. And then you walked back alongside of the trailer and tripped over something?

A. Yes, sir.

Defendant correctly states that with the trailer lights off, the Plaintiff could not see anything. However, the Defendant really relies on the converse of the statement; that with the trailer lights on the Plaintiff could have seen the area sufficiently to have avoided the accident. The Defendant argues that Mr. Paschal could see the other trailers and the junk because of his trailer lights. This is a direct misquote from the Plaintiff's deposition which states:

90. How was it that you could see the junk there when you were backing your trailer in?

A. From the trailer lights in the back.

The answer clearly shows that it was the back-up and brake lights on the rear of the trailer and not the small warning lights on the side of the trailer which illuminated the area. Therefore, leaving the lights on would not have illuminated the area at the side of the trailer where Plaintiff fell.

Further, there was never any statement that even the brighter illumination from the rear of the trailer, would have illuminated the area. Simply stating that the Plaintiff can see the large bulks of other trailers, hardly gives the impression that the area beside the trailer would be lit to any great extent.

In *Houchin, supra*, the Court specifically states

“Of course, where reasonable minds could differ about the presence or applicability of the criteria to determine the question of substantial necessity or urgency with a degree of difficulty in effec-

tively eliminating the risk prior to encountering it, a jury issue is presented, as was held under the factual picture presented in the Parker case”.

There was no showing that leaving the lights of the trailer on would effectively eliminate the risk, nor even illuminate the area to the slightest extent.

Summary Judgment is an extreme action that should only be considered in unusual cases. In *Stewart v. Lawson*, Ky., 437 S. W. 2d 733 (1969), the Court stated a movant for Summary Judgment will not prevail unless a right to judgment is shown with such clarity that there is no room left for controversy. It must be established that the adverse party cannot prevail under any circumstances.

An excellent example of the problem with lighting in parking lots is the case of *Downing v. Drybrough*, Ky., 249 S. W. 2d 711 (1952). The Plaintiff, Maude Downing, fell on a concrete coping which separated parking lanes. The negligence of Defendant was based on improper lighting and the Defendant pleaded that the Plaintiff was contributorily negligent by failing to depart from the lot by the same aisle through which she had entered. This, the Court of Appeals felt, was error and stated that even though the division strip was not a dangerous or unsafe obstruction, the Plaintiff was entitled to go before the jury.

The Court in *Creech v. Heaven Hill Distilleries, Inc.*, Ky., 497 S. W. 2d 934 (1973) stated its position concerning the issue of contributory negligence of one who is injured while walking in the dark:

“The standard of care in all of them is reasonableness but what is reasonable in each case necessarily depends upon the circumstances of that case. Whether conduct is reasonable under given circumstances is ordinarily a jury question . . .”

Certainly, Mr. Paschal could hardly be said to be contributorily negligent for failing to leave on some tiny amber lights to try to light up the litter-strewn, unlit parking lot of International Harvester Company, Inc.

CONCLUSION

The facts of this case show that the Summary Judgment for the Defendant was clearly in conflict with the principles of *Stewart v. Lawson*, Ky., *supra*. There has been no showing, much less a showing with clarity, that there is no room for controversy. The lower Court in granting the Summary Judgment has stated that, contrary to *Houchin v. Willow Avenue Realty Company*, *supra*, the injured party must do everything possible to eliminate the known risk, and failing to do any of these acts, even though they may be ineffective, the injured party is contributorily negligent. This surely cannot be the law of the Commonwealth. Mr. Paschal has a right to a jury trial on the issue of negligence; a right which, we are certain, will be upheld by this Court.

Respectfully submitted,

ROBERT G. LOHMAN, JR.

RICHARD A. DOLIN

200 South Seventh Street
Louisville, Kentucky 40202

Attorneys for the Appellant